**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 803 of 1994**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE SHARAD D.DAVE**

==========

**STATE OF GUJARAT - Appellant(s)**
**Versus**
**DINESHBHAI PATEL - Opponent(s)**

==========

**Appearance :**
MR AJ DESAI, APP for Appellant(s) : 1,
MR SUNIL C PATEL for Opponent(s) : 1,

==========

**CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE**

**Date : 10/08/2007**

**ORAL JUDGMENT**

1. Being aggrieved by and dissatisfied with the judgment and order dated 16.5.1994 passed by learned Judicial Magistrate First Class at Navsari in Criminal Case No.8347 of 1990 whereby learned trial Judge acquitted the accused for the offences punishable under Sections 494 and 465 of the Indian Penal Code, the State has preferred this appeal under Section 378 of the Criminal Procedure Code.

2. The brief facts of the prosecution case are such that a charge sheet came to be filed against the accused stating that the

accused is an African citizen and that though his wife was alive, he married for second time with one Sharmilaben at Navsari as per Hindu customs and rituals and declared before the Sub-Registrar, Navsari that he was unmarried. It is stated that by giving such false declaration, he married for the second time and committed offences punishable under Sections 494, 420 and 467 of the Indian Penal Code.

3. The charge was framed against the accused for the offences punishable under Sections 494 and 465 of Indian Penal Code vide Exh.9 and on the accused denying the allegations and claiming to be tried, the evidences of complainant's side were recorded, further statement of the accused was recorded under Section 313 of the Criminal Procedure Code and after hearing learned advocates for the parties, learned trial Judge came to the conclusion, as stated above, against which the present appeal is filed by the State.

4. Heard learned APP Mr.A.J.Desai for the State and learned advocate Mr.Sunil C Patel for the respondent and perused the papers of the trial Court including the judgment which is under challenge.

5. Learned APP has submitted that the judgment and order is illegal, incorrect, improper, invalid and bad in law

inasmuch as learned trial Judge ought to have considered the deposition of the complainant who is the first wife of the accused and there is no reason for the complainant to give false complaint against her own husband. He further submitted that learned trial Judge ought to have considered that the prosecution witness Sharmilaben Dineshbhai Patel has stated in her evidence that she has been married to the accused for last two years and the memorandum of marriage contains the signature of Sharmilaben Patel and the accused. He, therefore, submitted that learned trial Judge has committed error in not believing all these evidence and coming to conclusion that the offence is not proved against the accused and thus acquitted them. He, therefore, prayed to allow this appeal and set aside the judgment of learned trial Judge.

6. Against this, learned advocate Mr.Sunil Patel for the respondent – accused submitted that learned trial Judge has rightly come to the conclusion that from the deposition of the complainant, it is clear that the accused had married to one Krishnakumari before their marriage in the year 1980 in London and that she had sent divorce papers to the accused when the complainant was pregnant and, therefore, the marriage of the complainant and the accused itself is not legal as it itself was second marriage for the accused in presence of his first wife. He submitted that therefore, learned trial Judge has rightly held that their marriage is itself void looking to Section 494 of the Indian Penal Code. He submitted that

looking to all these circumstances, learned trial Judge has come to the conclusion that the accused was not guilty of the offences and acquitted him and, therefore, this Court may dismiss the appeal. In support of his submissions, he relied on the decisions in the case of (1) Bhaurao Shankar Lokhande and another V/s The State of Maharashtra, reported in AIR 1965 S.C.1564, (2) Kanwal Ram and others V/s The Himachal Pradesh Administration, reported in AIR 1966 S.C.614 and (3) State of Gujarat V/s Bharatbhai Balubhai Lad and others, reported in 2006(1) GLR 514.

7. The complainant Daxaben Dineshbhai Exh.27 has stated in her evidence that she is married to the accused on 13.3.1984 in South Africa and she had two children out of that marriage. Thereafter, as there was some dispute between both of them, she filed a case for custody of their children in the court at London and an order was passed therein that the accused should take both the children out of London. According to her, the accused thereafter came to India at Pardi village, Dist.Valsad. Thereafter, on her coming to India, she came to know that her husband had married with one Sharmilaben in India by giving a false declaration that he is unmarried and that in spite of the fact that they are not divorced, her husband – accused has married for the second time. She also stated that her husband married with one Krishnakumari in the year 1980 at London and, thereafter, came to India and after one year again came to South Africa and married the complainant on

13.3.1984. She states that at the time of marriage, she did not know that her husband was married with Krishnakumari. When said Krishnakumari sent divorce papers to her husband and at the time when the complainant was pregnant, she came to know about this.

8. Looking to the deposition of this witness, it is clear that the accused was married before he married the complainant. Therefore, learned trial Judge has rightly come to the conclusion that the marriage itself is void in view of the fact that before the accused married the complainant, he was married with one Krishnakumari and there was no legal separation between them. Learned trial Judge has rightly come to the conclusion that the complainant was not able to prove that her marriage with the accused was legal and, therefore, the prosecution is not able to prove the case against the accused.

9. In view of the above, I am in complete agreement with the judgment of the learned trial Judge and, therefore, I do not find any merits in this appeal. Hence, this appeal stands dismissed.

(Sharad D.Dave,J)

srilatha